



This document is scheduled to be published in the Federal Register on 06/28/2013 and available online at <http://federalregister.gov/a/2013-15534>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0086]

Group Lotus plc Modification of a Temporary Exemption from an Advanced Air Bag Requirement of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of modification of a temporary exemption from a provision of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection.

SUMMARY: This notice modifies the temporary exemption granted to Group Lotus plc (Lotus) on March 8, 2013. The agency granted Lotus an exemption from the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies for the front passenger position of its Evora model for the period from March 8, 2013 to March 8, 2014. The agency is modifying the dates of the exemption to account for vehicles Lotus manufactured before the exemption went into effect.

DATES: NHTSA Temporary Exemption No. EX-13-01 granted to Lotus is modified to include vehicles imported on or after November 7, 2012. The termination date of the exemption is modified to be November 7, 2013.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building 4th Floor, Room W41-326, Washington, DC 20590.

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SUPPLEMENTARY INFORMATION:

On March 8, 2013, NHTSA published in the **Federal Register** a notice granting Group Lotus Plc (Lotus) a temporary exemption from the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies in Federal Motor Vehicle Safety Standard (FMVSS) No. 208 for the front passenger position of its Evora model for the period from March 8, 2013 to March 8, 2014.¹ This requirement became effective for small manufacturers such as Lotus as of September 1, 2012.

After publication of Lotus's exemption, Lotus informed the agency of the existence of 51 vehicles that were manufactured on or after September 1, 2012 and before March 8, 2013 that were imported into the United States. Lotus asserted that these vehicles were partially manufactured prior to September 1, 2012, but were not completed until after that date. These 51 vehicles bear certification labels stating a date of manufacture of August 2012 and are certified to comply with the standards, including FMVSS No. 208, applicable as of August 2012.

For the purpose of FMVSS No. 208 compliance, these vehicles are identical to those manufactured prior to September 1, 2012 and after March 8, 2013. However, the vehicles are not certified to be compliant with the standards in effect as of the date they were actually manufactured, which include the higher speed belted test requirement using the 5th percentile adult female dummy. Moreover, the exemption that NHTSA granted to Lotus would not apply to these vehicles because they were manufactured before March 8, 2013.

¹ 78 FR 15114.

Lotus has agreed to pay a civil penalty for alleged violations of 49 USC 30112(a).² Additionally, the Administrator has the authority to terminate or modify a temporary exemption granted under 49 CFR Part 555 upon a finding that (1) the temporary exemption is no longer consistent with the public interests and the objectives of the National Traffic and Motor Vehicle Safety Act; or (2) the temporary exemption was granted on the basis of false, fraudulent, or misleading representations or information. At the time the agency granted Lotus its exemption, the agency believed that Lotus ceased production of the Evora for the United States market as of September 1, 2012 and was not aware that Lotus continued to manufacture the Evora after September 1, 2012. On the basis of this incorrect information, NHTSA granted Lotus a one-year exemption commencing on March 8, 2013.

Having found that Lotus's exemption was based on incorrect information, the agency has the authority to modify or terminate Lotus's temporary exemption.³ Because the 51 vehicles are identical to those manufactured prior to September 1, 2012 and those that may be manufactured under Lotus's temporary exemption, the agency has decided it is appropriate to modify Lotus's exemption to apply it retroactively to vehicles manufactured after September 1, 2012 and imported on or after November 7, 2012. This will allow the exemption to apply to 50 of the 51 vehicles manufactured after September

² Among other things, 49 USC 30112(a) prohibits a person from selling, offering for sale, introducing or delivering into interstate commerce, or importing into the United States any motor vehicle that does not comply with the FMVSSs then in effect.

³ Lotus has acknowledged that it has been duly notified by NHTSA of any facts that warrant modifying or terminating its exemption and that it has had an opportunity to demonstrate or achieve compliance with all lawful requirements.

1, 2012.⁴ Lotus will export one vehicle from the United States, which will not be included in the exemption.

The 50 vehicles will count toward the 450 vehicle limit under the exemption. Because these 50 vehicles are now covered by an exemption, Lotus must ensure that they are labeled with the correct date of manufacture and statements required by 49 CFR 555.9 for exempted vehicles.

The agency's determination that a one-year exemption is appropriate under the circumstances has not changed. Thus, in addition to applying the exemption retroactively to 50 vehicles, the agency has also modified the termination date of the exemption so that the exemption granted is not longer than one year. The exemption will now apply to vehicles manufactured through November 7, 2013.

Based on the foregoing and pursuant to 49 CFR 555.8(d), the Administrator finds that NHTSA Temporary Exemption No. EX 13-01, granted to Lotus from S14.7 of 49 CFR 571.208 for the front passenger seat of its Evora model was based on incorrect information. Accordingly, the exemption is modified to include vehicles imported on or after November 7, 2012. The exemption is also modified to terminate on November 7, 2013.

(Authority: 49 U.S.C. 30113; 49 CFR 1.95, 555.8)

⁴ It is not unprecedented that for NHTSA to apply a temporary exemption to vehicles that have already been manufactured at the time of the grant of an exemption. In a March 1995 grant of an application for a temporary exemption from the air bag requirements FMVSS No. 208 to Excalibur Automobile Corporation, the agency applied a temporary exemption to 36 vehicles that were, at the time of the request for exemption, in control of the company's dealers. See 60 FR 12281 (Mar. 6, 1995).

Issued in Washington, DC, on _____ June 21, 2013 _____ under authority
delegated in 49 CFR 1.95, 501.5, and 501.7.

David L. Strickland
Administrator

Billing Code 4910-59-P

[FR Doc. 2013-15534 Filed 06/27/2013 at 8:45 am; Publication Date: 06/28/2013]